APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 70-13

BUFORD ELLINGTON, GOVERNOR OF THE STATE OF TENNESSEE, et al.,
Appellants,

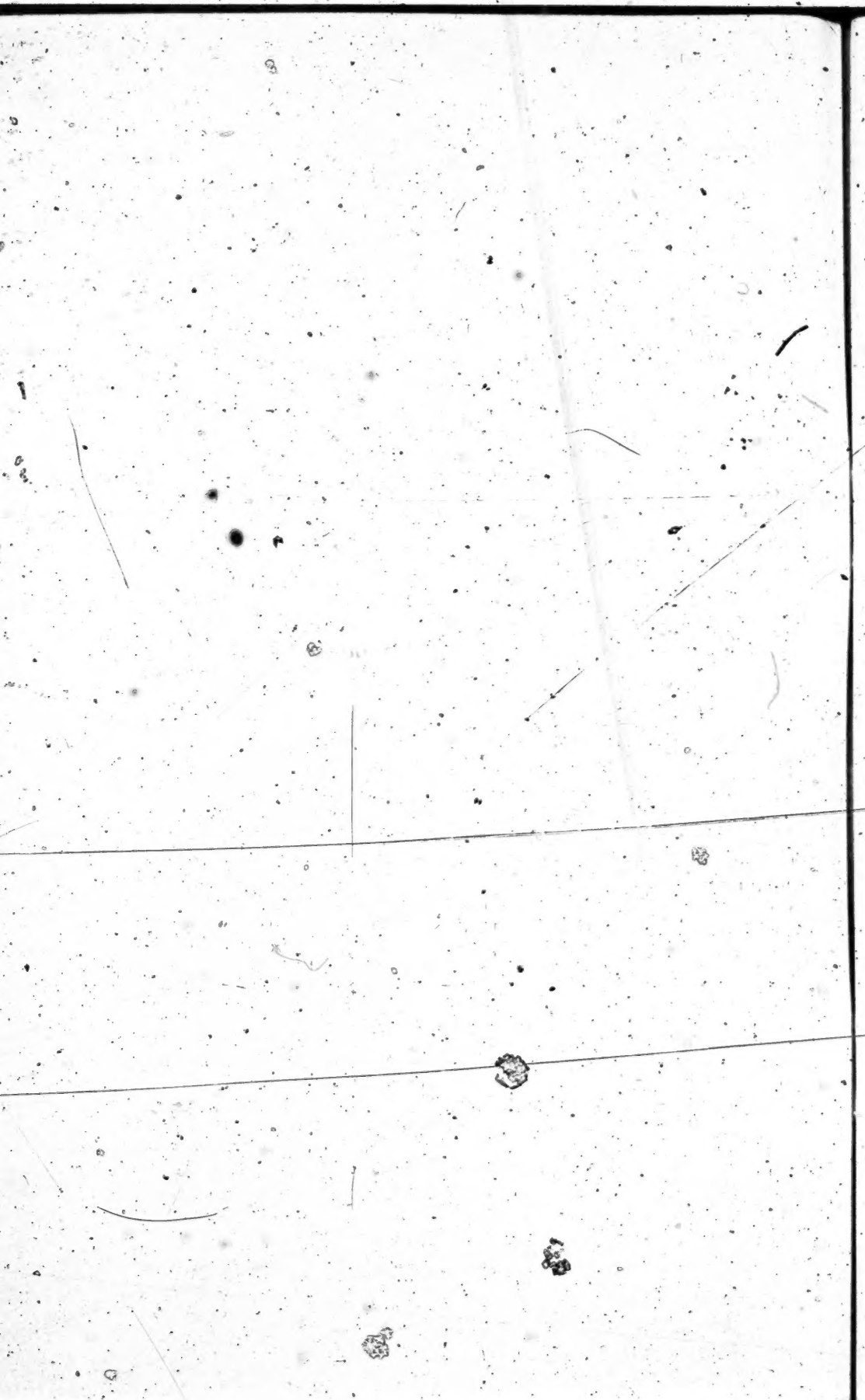
vs.

JAMES F. BLUMSTEIN,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT OF MIDDLE DISTRICT OF TENNESSEE

FILED: SEPTEMBER 29, 1970

PROBABLE JURISDICTION NOTED: MARCH 1, 1971



In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 769

BUFORD ELLINGTON, GOVERNOR OF THE STATE OF TENNESSEE, et al.,
Appellants,

vs.

JAMES F. BLUMSTEIN,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT OF MIDDLE DISTRICT OF TENNESSEE

APPENDIX

INDEX

[1*] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No: 5815

James F. Blumstein,

vs.

Buford Ellington, Governor of the State of Tennessee; David M. Pack, Attorney General of the State of Tennessee; Joe C. Carr, Secretary of State of the State of Tennessee; Shirley G. Hassler, Co-ordinator of Elections of the State of Tennessee; George C. Thomas, Chairman of the State Board of Elections of the State of Tennessee; Lytle Landers and James E. Harpster, Members of the State Board of Elections of the State of Tennessee; Thomas W. Jarrell, Chairman of Davidson County Election Commission; Albert H. Thomas, Imogene Muse, J. Granstaff Dale, and John H. Henderson, Members of the Davidson County Board of Elections; and Mary P. Ferrell, Registrar-at-Large of Davidson County, State of Tennessee.

BASIS OF ACTION: Declaratory Judgment and Injunctive Relief—T. 28 USC 2201, 2202, 1343(3); 42 USC 1983; Seeking protection from application of T.C.A. Sec. 2-201, and injunction requiring that all registration books in all counties in the state of Tennessee remain open until July 29, 1970, or other reasonable date.

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* Numbers appearing in brackets indicate page numbers of original record.

[2] **RELEVANT DOCKET ENTRIES**

Date	Proceedings
7-17-70	Filed: Complaint by plaintiff
7-20-70	Filed: Plaintiff's Motion for Preliminary Injunction; Affidavit in Support of Motion.
7-21-70	Order to Show Cause Entered; Defts. to appear 7-30-70, 10:00 a.m. to show cause why preliminary injunction should not issue. 13 Att. copies delivered to U.S. Marshal for service on defendants, att. copy mailed to James F. Blumstein, counsel pro se.
7-30-70	Filed: Reply of Defendants to Order to Show Cause.
7-30-70	Order Entered: Application for P.I. insofar as elections Aug. 6, are concerned—Denied: Appl. of Geo. B. Sanders Jr. to intervene—Denied: Plf's oral motion that he (& class) be allowed to vote in election held by Commissioners of Election pending decision—Denied: Stipulated hearing this date would constitute final hearing on merits on appl. for P.I.; Plf. and Defts may file additional briefs and proposed intervenor may file brief amicus curiae by Aug. 10; Plf's motion to amend compl. to include attack on validity of residency requirements—Article IV, Sec. 1, Tenn. Constitution—Granted; Attested copy to attorneys of record.
8- 4-70	Order Entered: Plaintiff's Motion to Reconsider, etc., is not well taken and is Denied. Attested copy to attorneys of record.
8-10-70	Filed: Amendment to Complaint; Supplementary Affidavit—plf. affiant; Supplementary Memorandum of Law for Plaintiff; Certificate of Service.

8-31-70 Order Entered:—Judges Phillips, Brown and Gray: Class Action Maintained. Attested copy to attorneys of record.

[2b] 8-31-70 Entered: Memorandum—Judges Phillips, Brown & Gray: Judgment of the Court that 1-yr./3 mos. durational residency requirements contained in Article IV, Sec. 1, T.C.A. §2-201 & §2-304, are repugnant to Constitution of the USA, and are therefore null, void and of no effect; Order to implement decision and providing for appropriate injunctive relief will be submitted by counsel within ten days. Attested copy to attys. of record.

9- 9-70 Order Entered—approved by Cotmsel; Residency requirements contained in Article IV, Sec. 1, T.C.A. §2-201 & §2-304 are repugnant to U. S. Constitution, and are null, void and of no effect; Defts. to cause registrars in all counties of Tenn. to register all bona fide residents regardless of length of residency; to cause to be published in Memphis, Nashville, Knoxville and 1 Chattanooga, notice of this order; to cause registrars to remain open one day after effective date of this Order through Oct. 3, 1970 (30 days prior to election . . . days and hours as set forth); Defts. to reimburse pltf. for all fees and costs. Attested copy to attys. of record (Signed by Judge Gray for Three Judge Court).

9-10-70 Filed: Defendant's Motion to Stay Order Pending Appeal to the U. S. Supreme Court; Certificate of Service; Notice of Motion.

9-11-70 Order Entered: Defendants' Motion to Stay Order entered 9-9-70 pending appeal is not well taken—Denied. Att. copy to attys. of record.

9-22-70 Entered: Modification of Order entered 9-9-70, as set forth. Att. copy to attys. of record.

[3] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

COMPLAINT

(Title Omitted—Filed July 17, 1970)

[4] I

Jurisdiction

This is a civil action instituted to protect the rights of plaintiff and all others similarly situated in the State of Tennessee from application of T.C.A., § 2-201, which establishes as a non-waivable pre-condition to the exercise of the franchise, that residents of the state, otherwise qualified to vote, undergo a one year waiting period in the State of Tennessee and a three month waiting period in their current county of residence. It is an action for a Declaratory Judgment pursuant to 28 U.S.C., § 2201 and for injunctive relief pursuant to 28 U.S.C., § 2202, 42 U.S.C., § 1983, and 28 U.S.C., § 1343(3). T.C.A. 2-201 is a statute of statewide applicability, and the waiting period requirement violates the rights of plaintiff and other members of the class to freedom of travel, to freedom of political association, to vote for United States Senator, and to vote for United States Representative; the waiting period requirement also deprives plaintiff and other members of the class of their rights to due process of law, to equal protection of the laws, and to privileges and immunities as citizens of the United States, as guaranteed by the Fourteenth Amendment to the United States Constitution. Jurisdiction is conferred on this court as a three-judge tribunal by 28 U.S.C., § 2281 et seq.

II

Parties

The Plaintiff, James F. Blumstein, is assistant professor of law at Vanderbilt Law School. He is a resident of Nashville, Tennessee.

[5] The defendant Buford Ellington, is the Governor of the State of Tennessee. As such he is charged with the responsibility, under Article 3, Section 1 of the Constitution of the State of Tennessee, of faithfully carrying out and executing the laws of the United States and the State of Tennessee. His official residence is in Davidson County, Tennessee.

The defendant, David Pack, is the Attorney General of the State of Tennessee. He is the chief legal officer of the State and pursuant to T.C.A., § 7-610 is commissioned to defend all cases brought against the State of Tennessee in a United States District Court. He resides in Davidson County, Tennessee.

The defendant, Joe C. Carr, is the Secretary of State of the State of Tennessee. Under T.C.A., § 2-110, it is his duty to designate or appoint a person in his office to coordinate election activities throughout the state, to serve at his pleasure, according to T.C.A., § 2-111. He resides in Davidson County, Tennessee.

The defendant, Shirley G. Hassler, is the Coordinator of Elections of the State of Tennessee. Under T.C.A., § 2-111, it is his duty to interpret, or have interpreted, questions of law for the benefit of local or county election officials, and to train new election officials with a view toward uniformity of election procedures throughout the state. He resides in Davidson County, Tennessee.

The defendant, George C. Thomas, is chairman of the State Board of Elections of the State of Tennessee. Under T.C.A., § 2-091, it is the duty of the State Board of Elec-

tions to appoint all the members of the county election commissions throughout the State of Tennessee. The defendants, Jack Norman, [6] Sr. and Carl McInturff, are members of the State Board of Elections.

The defendant, Thomas W. Jarrell, is Chairman of the Davidson County Election Commission. Under T.C.A., § 2-307, it is the duty of the county board of elections in each county to appoint registrars of voters. Under T.C.A., § 2-319, it is also the duty of the county boards of elections to hear appeals from applicants denied the right to register by the registrar. The defendants, J. Granstaff Dale, John H. Henderson, Imogene Muse, and Albert H. Thomas are all members of the Davidson County Board of Elections.

The defendant, Mary P. Ferrell, is the Registrar-at-Large of Davidson County. It is her duty to keep the register of voters for Davidson County and to allow all those qualified to vote to register. T.C.A., § 2-318.

III

Class Defined

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiff brings this action in behalf of himself and all others similarly situated. The class consists of those residents of the State of Tennessee who are denied the right to register by virtue of the waiting period requirements of T.C.A., § 2-201. Specifically, this class includes those residents of the State of Tennessee who have lived in the state for less than one year or in their county of current residence for less than three months. Plaintiff established residence in Nashville, Tennessee, on June 12, 1970, and by the time of the August 6, 1970, primary election he will not have met the three month waiting period requirement for durational residence in Davidson County, nor will he have met the [7] one year requirement for durational state residence.

Members of the class are so numerous that joinder of all members as parties herein is impractical. But there are questions of law common to the entire class, without material factual differences. The claims of plaintiff, as representative of the class, are typical of the class, and he will fairly and adequately protect the interests of the class. There is no adversity of interest between plaintiff and any member of the class. Moreover, the prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish imcompatible standards of conduct for the party opposing the class, in this case the State of Tennessee and its agents, defendants herein. Furthermore, the party opposing the class has acted on grounds generally applicable to the class, and final injunctive and declaratory relief is therefore appropriate for the class as a whole.

IV

Statements of Fact and Allegations

The plaintiff is on the faculty of Vanderbilt Law School. He consummated his contract for employment with Vanderbilt Law School in January, 1970, and in April, 1970, agreed to begin teaching during the summer session, commencing on July 13, 1970. He arrived in Nashville on June 12, 1970, and moved into the apartment where he now resides, at 112 Acklen Park Drive, on June 19, 1970. He took the Tennessee Bar Examination on July 9-10, 1970.

On July 1, 1970, plaintiff appeared at the office of defendant, Mary P. Ferrell, Registrar-at-Large of Davidson County. [8] He asked that he be allowed to register to vote for the August 6, 1970, primary and the November, 1970, general election. He explained that he was a resident of Nashville, Tennessee, but that he had not been a

resident of Davidson County for three months or of the State of Tennessee for one year. Having been called by one of the clerks, Mrs. Ferrell explained that a resident had to wait three months after arriving in Davidson County before he would be qualified to register and had to wait for one full year after becoming a resident of the State of Tennessee before he could register. This requirement, she held, applied to elections for United States Senate and United States House of Representatives as well as for state and local elections. Mrs. Ferrell then informed plaintiff of his right to appeal her decision, denying him the right to register, to the Davidson County Election Commission, pursuant to T.C.A., § 2-319.

Plaintiff wrote a letter to the Davidson County Election Commission chairman, Thomas W. Jarrell, dated July 1, 1970, in which he requested that the county election commission hear his appeal. By letter dated July 7, 1970, Mrs. Ferrell notified plaintiff to appear before the county election commission on the afternoon of July 14, 1970. At the meeting, plaintiff repeated his request before all five members of the county election commission that they allow him to register. He asked that the commission read into the statute a reasonable requirement, treating the waiting period requirement as a waivable guide to commission action, but rebuttable upon a proper showing of competence to vote intelligently in the primary and general election. The members of the commission ruled any showing of competence irrelevant, holding the waiting period mandatory; [9] non-waivable, and a pre-condition to the exercise of the franchise. Under Tennessee law, there are no further administrative remedies open to plaintiff.

V

Ripeness

Last term, the United States Supreme Court considered the issue of durational residence requirements in the con-

text of presidential elections. However, by the time the Court decided the case, the State of Colorado had modified its waiting period requirement so that plaintiffs no longer fell within the deprived class. Consequently, the Court refused to reach the merits, ruling the case moot under those special circumstances. Justices Brennan and Marshall dissented, disagreeing with the mootness argument and expressing the fear that slow adjudication in such cases in the future might leave aggrieved plaintiffs with a constitutional right but without an enforceable remedy. **Hall v. Beals**, 396 U.S. 45, 50-56 (1969).

Clearly, the waiting period requirement, an irrebuttable presumption of non-qualification for the franchise, keeps numerous bona fide residents off the voting rolls annually. After cases such as **Shapiro v. Thompson**, 394 U.S. 618 (1969) and **Wyman v. Bowens**, 38 U.S.L.W. 3311 (U.S. Feb. 24, 1970) where waiting periods as a condition precedent to the receipt of public assistance payments were held invalid, such durational residence requirements must be deemed suspect. Moreover, such cases as **Carrington v. Rash**, 380 U.S. 89 (1965) (invalidating conclusive presumption of non-residence for military personnel for the purpose of voter registration), **Harper v. Virginia Board of Elections**, 383 U.S. 663 (1966) (invalidating a state poll tax as [10] invidious and irrelevant to the exercise of the franchise), and **Kramer v. Union Free School District No. 15**, 395 U.S. 621 (1969) (invalidating a statute restricting the franchise in local school board elections to property owners or lessees, or parents of children in school) indicate a growing concern of the Court with unnecessary, arbitrary, and overly broad obstacles to universal suffrage.

Just last week, in **Burg v. Canniffe**, ... F. Supp. .... (Civil Action No. 69-855-C, July 8, 1970), a three-judge federal district court held unconstitutional, as a violation of equal protection under the Fourteenth Amendment, a

Massachusetts statute establishing a one year waiting period prior to voter registration eligibility. Unquestionably, the issue is ripe for adjudication now.

VI

The Constitutional Claim

The United States Supreme Court has often recognized that when fundamental liberties are at stake, a state must justify any classification which restricts those liberties by a compelling state interest. Three different enumerated rights are involved in the case where a resident is denied the right to register because he has not met a mandatory waiting period. First, the right to travel is involved. In **Aptheker v. Secretary of State**, 378 U.S. 500 (1964), the Supreme Court struck down Section 6 of the Subversive Activities Control Act of 1950, 50 U.S.C., § 785, on the ground that the freedom of travel was a fundamental right and that the government could not infringe on it when there were more precise, and therefore, less drastic means available to achieve the legitimate congressional goal of maintaining the [11] national security. Citing **Shelton v. Tucker**, 364 U.S. 479, 488 (1960), the Court said

> Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same purpose.

In **United States v. Guest**, 383 U.S. 745 (1966), the Supreme Court reasserted the fundamental nature of the right to travel, in that situation not internationally but interstate. Recognizing that the right of interstate travel was secured by he United States Constitution, the Court

held that it could be protected by federal criminal legislation. Most recently, the Court invalidated a state waiting period requirement of one year before residents were eligible to receive public assistance payments. **Shapiro v. Thompson**, 394 U.S. 618 (1969); **Wyman v. Bowens**, 38 U.S.L.W. 3311 (U.S. Feb. 24, 1970). The Court said the right to travel meant that a person should be able to "travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." **Shapiro v. Thompson**, supra, at p. 629.

The second right involved is the right to vote. In **Wesberry v. Sanders**, 376 U.S. 1, 17 (1964), the Supreme Court observed that

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

While the states have broad powers to determine the conditions under which the suffrage may be exercised, **Lassiter v. Northampton County Board of Elections**, 360 U.S. 45 (1959), no state may impose [12] burdens on the franchise which are prohibited in other sections of the Constitution. Thus, no state can pass laws regulating elections in violation of the Equal Protection clause of the Fourteenth Amendment. **Williams v. Rhodes**, 393 U.S. 23, 29 (1968); **Harper v. Virginia Board of Elections**, 383 U.S. 663 (1966).

In **Reynolds v. Sims**, 377 U.S. 533, 562 (1964), the Court said that

> since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement

> of the right of citizens to vote must be carefully and meticulously scrutinized.

Just as in the Reapportionment Cases the Court looked closely at situations where votes were **diluted**, the Court will look closely at classifications which **deny** the right to vote. See **Carrington v. Rash**, 380 U.S. 89 (1965); **Evans v. Cornman**, 38 U.S.L.W. 4511 (U.S. June 15, 1970). The reason for this careful examination is that "statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government." **Kramer v. Union Free School District No. 15**, 395 U.S. 621, 626 (1969).

> Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. **Kramer**, supra, at p. 626-27.

Thus, when the Court is examining a classification which denies the franchise to a substantial group, the standard of review [13] is very stringent. This is especially true when the source of the right to participate is the federal Constitution through the Seventeenth Amendment and Article I, Section 2. As the Court in **Kramer** stated, "the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a 'rational basis' for the distinctions made are not applicable. . . . [W]hen the challenge to the statute is in effect a challenge of this

basic assumption [that the institutions of state government fairly represent all the people], the assumption can no longer serve as the basis for presuming constitutionality." **Kramer**, supra, at pp. 627-28.

The third fundamental right at stake is the First Amendment right of freedom of political association. The coalescence of the right to effective political representation and participation and the First Amendment right of political association was recognized by the Supreme Court in **Williams v. Rhodes**, 393 U.S. 23 (1968), where the Court declared Ohio's restrictions on third party access to the ballot unconstitutional. The Court asserted that the right of political association for the advancement of political beliefs was illusory without the concomitant power to transform political beliefs into political acts through the voting process. Justice Harlan concurred specially on the First Amendment ground alone. He noted that Ohio had not directly limited the right to assemble or discuss public issues, but by denying any opportunity to participate in the selective procedure, the state infringed an important substantive right. "The right to have one's voice heard and one's views considered by the appropriate governmental authority is at the core of the right of [14] association." **Williams v. Rhodes**, supra, at P. 41 (Harlan, J. concurring).

In deciding questions under the Equal Protection clause of the Fourteenth Amendment, the Court must look at (a) the facts and circumstances behind the law; (b) the interests the state claims to be protecting; and (c) the interests of those disadvantaged by the classification. **Williams v. Rhodes**, supra, at P. 30. Since the rights at stake are fundamental, the Court must undergo a three step analysis: (1) Are the interests the classification purports to further legitimate state interests? (2) If the interests are legitimate, is the statute drawn narrowly enough to meet the test of necessity? See **United States**

v. Robel, 389 U.S. 258 (1967); Elfbrandt v. Russell, 384 U.S. 11 (1966); Aptheker v. Secretary of State, 378 U.S. 500 (1964); (3) If the interest of the state is legitimate, and if the means used to promote it are narrowly enough drawn, is the interest involved so compelling that the resultant infringement on fundamental liberties is permissible.

It is the argument of plaintiff that it is illegitimate for Tennessee to attempt to discriminate against residents who are recent arrivals from out of state or from different counties. Shapiro v. Thompson, supra; Wyman v. Bowens, supra. Nevertheless, there may be some legitimate state interests when the reasons behind the waiting period requirement are examined. However, the mandatory waiting period is an insufficiently narrow restrictive classification to meet the test of necessity. The Court in Carrington v. Rash, supra, clearly expressed its disfavor of the use of irrebuttable presumptions as surrogates for other state concerns. The waiting period requirement is clearly a proxy for [15] other interests that the state wishes to promote, but it reflects the stroke of the butcher's meat cleaver rather than the artistry of the surgeon's scalpel. The resultant scars on the rights of plaintiff and those in the class he represents are unnecessarily deep and broad. Whateyer interests the state seeks to promote can be adequately served by less drastic restrictions on the exercise of the franchise.

In Shapiro v. Thompson, supra, the Court distinguished between a requirement for bona fide residence and a waiting requirement. Plaintiff and the class he represents do not here challenge the right of the State of Tennessee to establish reasonable standards of residence. However, the durational aspect of the waiting period, a suspect classification among residents after Shapiro, cannot be shown to be necessary to achieve any of the objectives durational residence requirements are supposed to further. In light

of this, it is impossible to say that the State has a compelling interest in the overly broad waiting period requirement. As an irrebutable presumption of ineligibility, the waiting period does not support any sufficiently compelling interest; it must be more precisely drawn to withstand constitutional analysis.

Wherefore, plaintiff prays:

1. That the Court issue a preliminary injunction requiring that the offices of all the county election commissions in the State of Tennessee and their registration books remain open until July 29, 1970, or for whatever other reasonable period the Court should deem appropriate, for the purpose of fully and completely registering and giving registration cards to the plaintiff and all persons similarly situated; and requiring [16] the defendants to publish notice of such extension and of the intention and willingness to register all citizens who are bona fide residents of the State of Tennessee, regardless of the length of time they have lived in the state or the county of their residence.

2. That after proper hearings upon the merits of this cause, the Court issue a declaratory judgment invalidating the mandatory waiting requirement for voter registration in the State of Tennessee and issue a permanent injunction restraining enforcement of this provision.

3. That defendants be assessed for costs of the plaintiff.

4. Such other general and special relief that the Court may find just and equitable.

By /s/ James F. Blumstein
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Vanderbilt Law School
Nashville, Tennessee 37203
Phone: (615) 322-3535

[17] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MOTION FOR PRELIMINARY INJUNCTION

(Title Omitted—Filed July 22, 1970)

Plaintiff moves the Court for a preliminary injunction requiring defendants Buford Ellington, David Pack, Joe C. Carr, Shirley G. Hassler, George C. Thomas, Jack Norman, Sr., Carl McInturff, Thomas W. Jarrell, J. Granstaff Dale, John H. Henderson, Imogene Muse, Albert H. Thomas, and Mary P. Ferrell, and all persons in active concert and participation with them, pending the final hearing and determination of this action, to keep open the offices and registration books of all the voting registrars in the State of Tennessee until July 29, 1970, or for whatever other reasonable period the Court deems appropriate, for the purpose of fully and completely registering and giving registration cards to the plaintiff and all persons similarly situated; and further, to require the defendants to publish notice of such extension and of the intention and willingness to register all citizens who are bona fide residents of the State of Tennessee, regardless of the length of time they have lived in the state or the county of their current residence.

Unless restricted by this Court, defendants in Davidson County will close their offices and registration books on July 20, 1970; other counties have already closed their offices and registration books.

[18] Such action by defendants will result in irreparable injury, loss and damage to plaintiff and the class he represents, causing disfranchisement in the August 6, 1970, primary election.

The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendants, but will

prevent irreparable injury to plaintiff and the class he represents.

/s/ James F. Blumstein
James F. Blumstein, Plaintiff
and Counsel Pro Se

[19] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ORDER TO SHOW CAUSE

(Title Omitted—Filed July 21, 1970)

In this action, a three-judge court has been convened pursuant to the provisions of 28 U.S.C. § 2281, the court consisting of the Honorable Harry Phillips, Chief Judge, United States Court of Appeals, the Honorable Bailey Brown, Chief Judge, United States District Court for the Western District of Tennessee, and the Honorable Frank Gray, Jr., Chief Judge, United States District Court for the [20] Middle District of Tennessee.

Upon consideration of the Complaint and the Motion for Preliminary Injunction, the court is of the opinion that a hearing should be had on the Motion for Preliminary Injunction. It is, accordingly, Ordered that the defendants appear before the court on the 30th day of July, 1970, at 10:00 a.m., to show cause why a preliminary injunction should not issue restraining defendants and all persons in active concert and participation with them, pending the final hearing and determination of this action, from further enforcement of the residency requirements of T.C.A. § 2-201.

For the Court:

Frank Gray, Jr.
United States District Judge

(Jurat Omitted)

[21] IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

REPLY OF DEFENDANTS TO ORDER TO SHOW CAUSE

(Title omitted—Filed July 30, 1970)

Come the defendants in the above styled cause, and in reply to the order to show cause, say:

I

The plaintiffs seek a preliminary injunction restraining defendants, and all persons in active concert [22] with them, from refusing to register, and permitting to vote, the plaintiffs and all others who wish and who qualify therefor, except for the residence laws of this state. Plaintiffs particularly attack the constitutionality of Section 2-201, Tennessee Code Annotated, which fixes the residence requirements for voting in this state at twelve (12) months in the state, and three (3) months in the county. An intervening petition has been filed by George B. Sanders, represented by Mr. George Barrett, for the American Civil Liberties Union, seeking a declaration of rights for himself and others of his class who have resided in this state less than one year but who has resided in the county for the three months required for local residency. Intervenor also puts at issue the residence provisions of Article IV, Section 1 of the Tennessee Constitution, as well as Section 2-201, T.C.A.

II

Defendants respectfully resist any such injunctive process as being designed to bring about chaos in the upcoming August general and primary elections. Such is not

warranted under the allegations in the complaint. There are only four (4) work days between the date of this hearing [23] and the August 6, 1970 elections. It is highly impracticable, if not impossible, to order the ninety-five (95) County Election Commissions in the state to re-open registration prior to the August elections. The final hearing can be held in advance of the November elections, so the granting of a temporary injunction would serve no purpose, and might engender great harm if granted without the benefit of a full hearing, at which time the main issue could be determined.

> "A court should act with utmost caution when it is asked to exercise its extraordinary power to issue an injunction against a coordinate branch of government, especially when the court is asked to give temporary or preliminary relief without benefit of a full hearing and opportunity to be fully advised on all issues."
>
> **American Bank Co. v. Blount**, 295 F.Sup. 1189 (citing **Yakus v. U.S.**, 321 U.S. 414, 64 S. Ct. 660).

The determination of a motion for a preliminary injunction requires the Court to weigh the movant's likelihood of success in the ultimate action, and the possible irreparable injury if motion is not granted against the possibility of injury to other parties if motion is granted, **Lermon v. Tenney**, 295 F.Sup. 780, likewise citing **Yakus v. U.S.**, supra. Further, where the injunction is sought against a public instrumentality, the movant must demonstrate a higher probability of success and damage of [24] irreparable harm than would be required against a private party, **Penn. Central v. Pub. Util. Comm.**, 296 F.Sup. 893.

Generally speaking, three broad areas should be explored and weighed by the Court in determining whether to issue a temporary injunction. These are stated in **Hosey v. Club**

VanCortlandt, 299 F.Sup. 501, citing **Unicon Management Corp. v. Koppers Co.**, 366 F.2d 199 (2d Cir., 1966), as being:

1. Probability that movant will succeed on merits;

2. Harm that will befall plaintiff if motion is denied; and

3. Harm defendant will suffer if it is granted.

There are other factors to be considered, but defendants will address themselves to these three broad areas.

[25] **Probability That Movant Will Succeed on Merits**

The plaintiffs base their legal authority on a decision of a three-judge District Court in Massachusetts, striking down a six months state residence requirement for voting in that state, imposed over a like six months residence in the district. Though most recent, it is hardly persuasive in view of numerous United States Supreme Court holdings to the contrary. A few such holdings are:

Article I, Section 2, of the Federal Constitution makes voter's qualifications rest on state law, even in federal elections. **Gray v. Sanders**, 372 U.S. 368, 83 S.Ct. 801.

The states have the power to impose reasonable citizenship age and residency requirements on the availability of the ballot, **Kramer v. Union Free School Dist.**, 395 U.S. 621, 89 S.Ct. 1886. See also, **Carrington v. Rush**, 380 U.S. 89, 85 S.Ct. 775.

Residency is a qualification properly required for both state and federal sufferage. **Forssenius v. Harman**, 235 F.Sup. 66, aff. 85 S.Ct. 1177, and

[26] The several states may impose age, residence and other requirements on the right to vote in a state or federal election so long as such requirements do not discriminate against any class of citizens by reason of race, color

or other invidious ground and so long as such requirements are not so unreasonable as to violate the equal protection clause of the 14th Amendment, **Drueding v. Devlin**, 234 F.Sup. 721, aff. 85 S.Ct. 807.

From the above, it is clear that age, citizenship and residency requirements are factors which a state may take into consideration in determining qualifications of voters. In the case *sub judice*, the only possible attack that could be made under existing case law is the reasonableness of Tennessee's one year in the state and three months in the county requirements. What, then, is a reasonable time? Who is most competent to judge it?

In **Kramer v. Union Free School District**, 89 S.Ct. 1886 (1969), at pages 1894-5, the Supreme Court said:

> "Clearly a state may reasonably assume that its residents have a greater stake in the outcome of elections held within its boundaries than do other persons. Likewise, it is entirely rational for a state legislature to suppose that residents, being generally better informed regarding state affairs than are nonresidents, will be more likely than nonresidents to vote responsibly. And the same may be said of legislative assumptions regarding the electoral competence of adults and of [27] literate persons on the one hand, and of minors and illiterates on the other. It is clear, of course, that lines thus drawn can not infallibly perform their intended legislative function. Just as illiterate people may be intelligent voters, non-residents or minors might also in some instances, be interested, informed and intelligent participants in the electoral process. Persons who commute across a state line to work may well have a great stake in the affairs of the state in which they are employed; some college students under 21 may be both better informed and more passionately interested in political affairs than many adults. But such discrepancies are the inevi-

table concomitant of the line drawing that is essential to law making. So long as the classification is rationally related to a permissible legislative end, therefore —as are residence, literacy and age requirements imposed with respect to voting—there is no denial of equal protection" (Emphasis supplied).

The authority of states to fix residence requirements surely are undenied. Is one year in the state reasonable? At the present time thirty-three states, Puerto Rico and the Virgin Islands, require one year; fifteen states require six months; one state three months, and one state ninety days. Residence in the county ranges from thirty days in Arizona, to one year in Mississippi.

The plaintiffs in this case only make attack on a state statute, Section 2-201, Tennessee Code Annotated. If it were struck down, Article IV, Section 1, of the Tennessee State Constitution would still require such residency. Intervenors, if allowed to intervene, also attack Article IV, Section 1, of the Constitution.

[28] Defendants realize that the Constitutional provision can also be struck down, if violative of the United States Constitution, as alleged, but this simply emphasizes the prematurity, along with other matters pointed out below, of a preliminary injunction before the August elections, or before the hearing of the case on the merits and final determination of the rights of the parties. The urgency, expressed by plaintiffs is unrealistic in view of the fact that the restriction on voting has been at least as great as at present since the enactment of Chapter 10, Public Acts of 1970, and the 1870 Constitution.[1]

In addition to the matter of an informed electorate of compelling state interest, is the matter of fraud flooding

[1] The Constitution was amended in 1953 to change residence requirements in county from six to three months.

of the polls, intra-precinct voting, and other factors which must be regulated to insure purity of the ballot box. This compelling state interest is recognized in the Tennessee Constitutional provision setting residence requirements for voting (Art. IV, Sec. 1). The second paragraph of such article provides:

> "The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box."

[29] In **Cook v. State**, 90 Tenn. 407, at page 413, our Tennessee Supreme Court, in considering state regulations on voting, had this to say:[2]

> "The Constitution surrounded the right of sufferage with some inconveniences, and authorized the Legislature to attach more. . . . The statute in nowise infracts the fourteenth amendment to the Constitution of the United States. Article IV, Section 4, of that instrument guarantees to every State in the Union a republican form of government. No government can be republican that fails to secure the purity of elections. By these terms of the United States Constitution, the Legislature of each State has the organic authority for the passage of such laws as will secure that purity, and it cannot be urged that such laws abridge the privileges or immunities of the citizen. In the matter of voting, the only privilege one has is to cast his ballot fairly, and not interfere with others by fraud, force or duress. His privileges are personal."

Cook v. State, supra, also pointed, at page 410, that:

> "Citizenship of the United States is a prerequisite, as fixing such interest in the welfare of the Federal Gov-

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[2] This case involved Tennessee's enactment of the Dortch ballot law.

ernment as supposes a study of and acquaintance with its governmental policy, and so of residence in the State and county, as well as to become acquainted with the character and capacity of the men who might ask office. These restrictions are terms of educational probation."

[30] In speaking to the question of residence requirements for voting, it is said in 18 Am. Jur., Elections, p. 217:

"The purpose of such a provision is twofold: (1) It constitutes an invaluable protection against fraud through colonization and the inability to identify persons offering to vote; and (2) it further affords some surety that the voter has, in fact, become a member of the community and that, as such, he has a common interest in all matters pertaining to its government and, is therefore, more likely to exercise his right more intelligently."

In 25 Am. Jur. 2d, Elections, at page 758:

". . . State constitutions and statutes generally require as a prerequisite to the right to vote, that the electors shall have been a resident of the state, county and voting district for a specified period prior to the election. The object of provisions prescribing residence as a qualification for the exercise of the right of suffrage is not merely for the purpose of identifying the voter, and as a protection against fraud, such provisions afford a medium of protection against those who have been living in the district only a short time or who have no intention of establishing a permanent residence in the area and hence have little interest or opportunity to become informed voters on community needs, and it has been held to be a reasonable legislative regulation concerning the exercise of the voting privilege." **Howard v. Skinner** (Ind.), 40 A. 379; **Wright v. Blue Mountain Hosp. Dis.**, 328 P.2d (Or.) 314.

In 20 C.J.S., Elections, at pages 68 and 69:

> "The object of prescribing residence as a qualification for the elective franchise [31] is not only to identify voters and to permit fraud, but also to assure that each voter will become in fact a member of his community and take an interest in its government."

Finally, in **State v. Closky**, 37 Tenn. 482, the Tennessee Supreme Court spoke to this question in connection with residence requirements on naturalized citizens, saying, in part:

> "It may be remarked too, that this construction of the Constitution may tend, in some degree, to check a very serious practical evil, in the judgment of right-thinking men—the mischievous struggles, in some quarters of the country, on the eve of an election, to manufacture votes for the occasion, no matter how."

[32] **Harm That Will Befall Plaintiffs if Motion Is Denied**

Complainant Blumstein has not alleged that he is no longer eligible to vote in the state of his former residency. He merely alleges to be knowledgable enough to vote here. He would only be restrained from doing that which others like him have been restrained from doing for one hundred years. At the most, he would be deprived of voting in this state and county in the August general and primary elections, if the injunction is denied. There would be sufficient time for a final determination of the rights of the parties before the November general election. If this Court agrees with the District Court in Massachusetts, as relied upon by original plaintiff, which upheld a required six months residency, the complainant would still not be eligible to vote in the August, 1970

elections. He admits that he moved to Tennessee June 12, 1970. He would, in fact, still be ineligible to vote in the November, 1970 elections, under that holding. Intervenors might meet the Massachusetts test.

Certainly the Tennessee residence requirement complained of does not discriminate against him (or any [33] class of citizens, if this is a legitimate class action) by reason of race, or color, nor is such "invidious,"[3] where it is the same as imposed in this state against all alike for one hundred years, and is the prevailing term of residency in considerably more than one-half of the States of the Union.

Harm the Defendants Will Suffer if Injunction Is Granted

As earlier pointed out, there are only four working days between the date of this hearing and the August 6th elections. It would be extremely difficult, if not impossible, for the Election Commissioners in the ninety-five counties to re-open registration of voters, prepare permanent registration forms, duplicates for each voting precinct and otherwise comply with state election laws before the August elections. If manpower were available to do this, the danger of error and improperly prepared [34] books at the polls would be practically inevitable. The probability of fraud would be real; persons not made a party to this suit and, therefore, not given an opportunity to defend, would be proceeded against equally with those properly before the Court. Although the State Board of Elections, by the provisions of Chapter 107, Title 2, Tennessee Code Annotated, appoint the County Election Commissioners, such County Boards are appointed for a specified term (two years) and once appointed, they are not in any way under the control of the State Board. They

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[3] **Drueding v. Devlin**, supra.

are autonimous in each county. Only the Davidson County Election Commission is before this Court. It would be as logical to say that since the General Assembly appoints the State Board, service on the General Asesmbly would bring the State Board into Court, as to say service on the State Board brings the County Boards before the Court. Or even more extreme, the people elect the General Assembly, so the suit should be **James Blumstein v. The People of Tennessee.** Defendants realize the other County Boards could, by amendment, be made parties, but this is one of the reasons mentioned above why a preliminary injunction would be premature at this time.

Further harm to defendants should be evident in the event the injunction is issued, and it later develops [35] that such was improvidently granted, and the final determination is that the Statute and Constitutional provision are reasonable. Registration books would then have to be reopened and unqualified voters purged. In the meantime, such unqualified voters may have voted in the August elections in sufficient number to change the outcome of one or more election, and election contests would be necessary to void such elections, and new elections held.

In short, the damage to plaintiffs would amount to no more than being deprived of a vote in one (1) election in this state (while probably still entitled to vote in the elections in their former state) as opposed to the irreparable damage set out above that could beset defendants if the injunction be granted.

[36] **Massachusetts v. Tennessee**

Although the over-all effect of the Massachusetts residence requirement is one year in the state, its **basic** requirement is six months. The Court there found this to be acceptable, but found the **additional** requirement of

one year in the state invalid because the defendants there relied only on the presumption of constitutional validity, and offered no evidence, and that . . . "consequently, there is nothing before this court on the basis of which any ruling can be made that the second six months of the one-year durational residence requirement contained in Mass. G. L., Ch. 51, Sec. 1, serves to promote any compelling interest . . . We intimate no opinion as to whether any other durational residence requirement short of twelve months may be found to serve a compelling state interest." That Court ruled as above after acknowledging that states have a legitimate interest in requiring their voters to establish that they have satisfied a durational residence requirement and setting forth compelling reasons for such (Opinion, pp. 12-13). Stated differently, it acknowledges the need but admits it can't draw a line and justify it, but simply rejects the line drawn by the constitution and the legislature which [37] was recognized by the United States Supreme Court in the **Kramer** case, as set out above, as being essential to law making even though discrepancies are the inevitable concomitant of such line drawing. Where the need exists and it is a compelling state reason, as acknowledged in the Massachusetts decision, who draws the line? The compelling reason being a state one, why not the state? It is an administrative matter. It is enforced administratively. To handle it otherwise would be to make it a judicial matter, to be judicially determined. There are approximately one and one-half million registered voters in the state of Tennessee. Are the Courts going to referee each applicant's case? Surely there is some justification for the period prescribed by the vast majority of the states of this country. What age may people contract? Marry? Cease to be juveniles? Hold public office? Vote? (In reference to the last, the United States Congress, in its infinite wisdom, has recently said that states are arbi-

trary in fixing the age of twenty-one years, and proceeded to arbitrarily fix eighteen years, even though many states, including Tennessee, have in recent years rejected constitutional amendment making such change.)

Finally, in comparing the Massachusetts' constitutional provisions with that in Tennessee, it may be noted that Tennessee's **basic**, or **first**, requirement is the **[38]** one year state residence (applicable to all), and a second imposition of three months residence in the county. Certainly it cannot be said that this is an antiquated provision since this Article and Section was reviewed by the people, through constitutional convention processes, in 1953, when the county residence requirement was reduced to three months. Had they felt the one year state requirement to be excessive, it likewise was subject to change at that time.

Defendants, therefore, respectfully pray that the injunctive process, requested by plaintiffs, be denied and that, upon the final determination of this matter, this case be dismissed.

/s/ Robert H. Roberts
Robert H. Roberts
Assistant Attorney General
State of Tennessee
Counsel for Defendants

/s/ Thomas E. Fox
Thomas E. Fox
Deputy Attorney General
State of Tennessee
Counsel for Defendants

David M. Pack
Attorney General and Reporter
Of Counsel

[39] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ORDER

(Title omitted—Filed July 30, 1970)

A hearing was had in this action July 30, 1970, on the Order to Show Cause heretofore issued on the application of plaintiff for a preliminary injunction.

At the hearing, the court denied the application of plaintiff for a preliminary injunction insofar as the elections, both General and Primary, to be held August 6, 1970, are concerned.

The application of George B. Sanders, Jr., for [40] leave to intervene as a party plaintiff was denied for the reason that the action of the court in denying injunctive relief as to the August elections made moot the contention presented by the proposed intervening complaint.

The plaintiff, James F. Blumstein, orally moved the court, after the application for preliminary injunction as to the August elections was denied, that, in lieu of such injunctive relief, he be allowed, by order of the court, to cast a ballot in such elections, to be held by the Commissioners of Election pending a decision of this action, and that this same relief be granted to all members of the class allegedly represented by him. The court took this motion under advisement and, having now considered the matter, Denies said motion. This motion is denied for the same reasons stated by the court at the hearing with reference to the denial of injunctive relief as to the August elections. The court pointed out that the elections are scheduled for one week from the date of the hearing, and that,

being mindful of the administrative, mechanical, and procedural problems involved in the registration process and the preparation of lists of eligible voters, it felt that any injunction at this late date would be a disruptive factor, possibly to the extent of creating a condition of chaos; in the preparations for the holding of the elections. The same reasoning applies to the denial of the motion of Mr. Blumstein, in that the court feels that the implementation of any such order as proposed by him would have the effect of being so obviously disruptive as to constitute an example of judicial improvidence.

By stipulation of the parties, it was agreed that the hearing this date would constitute the final hearing on the merits on the application for the permanent injunction, [41] and that there are no factual issues requiring that evidence be adduced. Counsel also waived further oral argument, and it was Ordered that the plaintiff and defendants would be allowed to file such additional and supplemental briefs as they may desire on or before August 10, 1970. It was also Ordered that George E. Barrett, Esquire, attorney for the proposed intervenor, George B. Sanders, Jr., be allowed to file a brief *amicus curiae*, such brief also to be filed on or before August 10, 1970.

Plaintiff moved for leave to amend his complaint to include an attack on the validity of the residency requirements set forth in Article IV, Section 1 of the Tennessee Constitution, and the court Granted such leave.

/s/ Harry Phillips
Circuit Judge

/s/ Bailey Brown
United States District Judge

/s/ Frank Gray, Jr.
United States District Judge

(Jurat Omitted)

[42] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ORDER

(Title omitted—Filed August 4, 1970)

Plaintiff has moved the court to reconsider a portion of its order of July 30, 1970, and to amend that order by providing that plaintiff be allowed, ". . . as representative of the class on whose behalf he sues, to cast a provisional ballot in the August 6, 1970 Primary and General Election, and impound his ballot, subject to a final adjudication of this cause on the merits."

Upon consideration, the court is of the opinion that the motion is not well taken, and it is Denied.

For the Court:

Frank Gray, Jr.
United States District Judge

(Jurat Omitted)

[43] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

AMENDMENT TO COMPLAINT

(Title omitted—Filed August 10, 1970)

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, and the order of the court of July 30, 1970, plaintiff amends his Complaint in the following respect:

1. Amending line three of the first paragraph of page one as follows:

Tennessee from application of Article IV, Section 1, and T.C.A., § 2-201, which establishes,

2. Amending line ten of the first paragraph of page one as follows:

§ 1983, and 28 U.S.C., § 1343(3). Article IV, Section 1, and T.C.A., § 2-201, have

/s/ James F. Blumstein
James F. Blumstein
Pro Se

[44] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ORDER

(Title omitted—Filed August 31, 1970)

In this case plaintiff sues, in his own behalf and on behalf of all others similarly situated, for a declaratory judgment and supplemental injunctive relief. He attacks the three-month and one year durational residency requirements on voting and voter registration, contained in Article IV, Section 1 of the Tennessee Constitution, in T.C.A., § 2-304, as repugnant to the United States Constitution.

It appearing to the court that the four [45] prerequisites to a class action enumerated in Rule 23(a), Federal Rules of Civil Procedure, are specifically met by the class on whose behalf this plaintiff sues, and it further appear-

ing that the conditions enumerated in Rule 23(b)(1)(A), in Rule 23(b)(1)(B), and in Rule 23(b)(2), Federal Rules of Civil Procedure, are also satisfied, it is therefore Ordered, pursuant to the provisions of Rule 23(c)(1), Federal Rules of Civil Procedure, that this class action may be so maintained.

/s/ Harry Phillips
Circuit Judge

/s/ Bailey Brown
United States District Judge

/s/ Frank Gray, Jr.
United States District Judge

(Jurat Omitted)

[46] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

James F. Blumstein

vs.

Buford Ellington, Governor of the State of Tennessee; David Pack, Attorney General of the State of Tennessee; Joe C. Carr, Secretary of State of the State of Tennessee; Shirley G. Hassler, Coordinator of Elections of the State of Tennessee; George C. Thomas, Chairman of the State Board of Elections of the State of Tennessee; Lytle Landers and James E. Harpster, Members of the State Board of Elections of the State of Tennessee; Thomas W. Jarrell, Chairman of the Davidson County Election Commission; J. Granstaff Dale, John H. Henderson, Imogene Muse and Albert H. Thomas, Members of the Davidson County Board of Elections; Mary P. Ferrell, Registrar-at-Large of Davidson County, State of Tennessee.

Civil Action.
No. 5815.

MEMORANDUM

(Filed August 31, 1970)

Before: Harry Phillips, Circuit Judge, Bailey Brown and Frank Gray, Jr., District Judges.

Gray, District Judge. This is an action for a declaratory judgment and supplementary injunctive relief, pursuant to 28 U.S.C., §§ 2201 and 2202, in which plaintiff, in his own behalf and on behalf of all others similarly [47] situated, attacks the three-month and one year durational residency requirements on voting and voter registration contained in Article IV, Section 1 of the Tennessee Constitution, and its statutory implementations in the Tennessee Code Annotated as repugnant to the Constitution of the United States of America. A three-judge court, required by 28 U.S.C., § 2281, has been convened under the provisions of 28 U.S.C., § 2284.

Plaintiff moved to Tennessee on June 12, 1970, and established his home in Nashville. He is under contract of employment as assistant professor of law at Vanderbilt Law School, and, consequently, intends to remain in Nashville indefinitely. He is thus a *bona fide* resident of the State of Tennessee, and this is undisputed.

On July 1, 1970, plaintiff appeared at the office of the Registrar-at-Large of Davidson County, where he attempted to register to vote. He was informed that, in order to qualify for registration, he had to have been a resident of Davidson County for the three-month period next preceding the forthcoming election (to be held August 6, 1970) and a resident of the State of Tennessee for the one year period next preceding that election. Accordingly, his attempt to register was refused.

Pursuant to T.C.A., § 2-319, plaintiff appealed the decision of the Registrar-at-large to the Davidson County Election Commission. At his appearance before the Election Commission, he was informed that the durational residency requirements were mandatory and that no exceptions could be made in his, or any other, case. Having thus exhausted his state statutory administrative remedies, he brought this action.

In his original complaint, plaintiff ignored the [48] fact that the durational residency requirements herein under consideration are contained not only in T.C.A., § 2-201, but also in the Tennessee Constitution. He has therefore amended his complaint so that the validity of both the constitutional and the statutory provisions is placed at issue in this case. It also appears that the Tennessee durational residency requirements apply to voter registration, as well as to actual voting, by virtue of T.C.A., § 2-304. We hereby take judicial notice of that fact, and the remainder of this opinion is thus addressed to the following issue: Whether the one year and three-month durational residency requirements contained in Article IV, Section 1 of the Tennessee Constitution, in T.C.A., § 2-201, and in T.C.A., § 2-304, are repugnant to the Constitution of the United States.

We are faced at the outset by the problem of whether this is a proper case in which to consider the validity of the three-month requirement. The August 6, 1970, primary and general elections have already been held, and plaintiff will have met the three-month requirement by the time of the November general election. As indicated above, plaintiff originally desired to vote in the August elections, and, to do so, he requested that this court issue a temporary injunction which would have had the effect of opening the Davidson County voter registration rolls to him and to all others similarly situated so that they could participate.

The temporary injunction was refused by this court on the ground that it would be "so obviously disruptive as to constitute an example of judicial improvidence."

Aware that he will have met the three-month requirement by the time of the November election, plaintiff next filed a motion to be allowed to cast a sealed provisional [49] ballot in the August 6, 1970, primary and general

elections, with the clerk of this court, thus keeping the three-month aspect of the case alive as to him, pending ultimate adjudication on the merits, and avoiding dismissal of that issue as moot. This motion was denied also, on grounds essentially the same as those for our refusal to issue the temporary injunction.

Despite plaintiff's fears as to the possible mootness of the three-month requirement issue, we are of the opinion that "[n]one of the concededly imperative policies behind the constitutional rule against entertaining moot controversies would be served by a dismissal in this case," **Sibron v. New York**, 392 U.S. 40, 57 (1968), and that, indeed, the three-month issue has not been rendered moot by the passage of the August elections without plaintiff's having been allowed to participate therein.

Controlling authority for such a view is found in **Moore v. Ogilvie**, 394 U.S. 814 (1969)—a case identical, in principle, to the one at bar. There, as here, preliminary extraordinary relief was withheld because of the administrative difficulties which would have been entailed by its implementation. The election was then conducted, and, as a result, the defendants argued that the case had been rendered moot. The Supreme Court disagreed. Applying the test first enunciated in **Southern Pacific Terminal Co. v. Interstate Commerce Commission**, 219 U.S. 498 (1911), the Court held that "[t]he problem is . . . 'capable of repetition, yet evading review' [citation omitted], [and] [t]he need for its resolution thus reflects a continuing controversy in the federal-state area. . . ." **Moore**, *supra*, at 816.

That the Tennessee three-month residency requirement [50] raises precisely such a problem—"capable of repetition, yet evading review"—is obvious from a cursory analysis of the factual situation which such a requirement creates. As stated by Mr. Justice Brennan, in his dis-

senting opinion in the case of **Hall v. Beals**, 396 U.S. 45, 50 (1969), with reference to the Colorado two-month residency requirement:

> "[T]he constitutional challenge to the . . . Colorado statute is peculiarly evasive of review. This is because ordinarily a person's standing to raise that question would not mature unless he had become a Colorado resident within two months prior to a[n] . . . election. Barring resort to extraordinary expedients, that interval is obviously too short for the exhaustion of state administrative remedies and the completion of a lawsuit. . . ."

This reasoning applies with equal force to the case at bar. Indeed, it applies with greater force, because of the fact that, unlike the **Hall** situation (discussed at greater length, *infra*), there has been no amendment to the Tennessee three-month provision taking the plaintiff out of the class aggrieved by it.

At first blush, the recent decision of the Supreme Court in **Hall**, *supra*, wherein an action challenging the validity of the Colorado durational residency requirement was held to be moot, might appear to have implications for the case at bar. Nevertheless, this court is of the opinion that the decision in that case is inapplicable to the instant situation.

In **Hall**, prior to the ultimate adjudication of the controversy, the statute called into question was amended by the Colorado Legislature. Thus, viewing ". . . the Colorado statute as it now stands, not as it once did . . .," the Supreme Court concluded that, unlike the plaintiff in the instant case, ". . . under the statute **as currently written**, the appellants could have voted in [the election in question] . . .," and therefore the case was no longer ". . . a present, **[51]** live controversy of the kind that must exist if we are to avoid advisory opinions on

abstract propositions of law." **Hall**, *supra*, at 48 (emphasis added).

The Court noted that the election was over, that it was impossible to grant plaintiffs the relief they had prayed for, and that they had, in fact, satisfied the residency requirement originally under attack. Nevertheless, the Court specifically noted that the case's mootness was ". . . **apart** from these considerations. . . ." (emphasis added). In short, the case was held to be moot not because the election had already been held, but rather because the statute under attack was no longer operative. Thus a ruling on the validity of the pre-amendment statute would, indeed, have been nothing more than an advisory opinion on an abstract proposition of law. The Court found it ". . . impossible to grant appellants the relief they sought in the District Court," because relief of any kind quite obviously cannot be granted against the operation of a nonexistent statute. The Tennessee requirement, quite unlike that of Colorado, remains in full force and effect, and thus the mootness holding in **Hall v. Beals**, as well as the rationale for that holding, is inapplicable to the case at bar.

The **Hall** Court also refused to consider plaintiffs' belated attack on the Colorado statute as amended. Although the Court stated that the ". . . amendatory action of the Colorado Legislature has surely operated to render this case moot," it is clear that the Court's refusal to consider the amended statute was actually based more on the question of plaintiffs' standing to challenge it than on the doctrine of mootness. The Court specifically noted that the amended statute did not affect either the plaintiffs' ". . . present interests, or their interests at the time this litigation was commenced," and [52] that they had never been members of the class aggrieved by the amended statute. Very clearly, there is a vast difference

between holding a case to be "moot" when it involves an attack upon a statute by a plaintiff who has never been affected by that statute in any fashion whatsoever and in holding a case to be "moot" when, as in the case at bar, the plaintiff has been directly affected by the statute under consideration and has attacked its validity consistently, by means of every procedure available to him. Thus, given the factual situation in **Hall v. Beals**, the Supreme Court had no alternative but to hold as it did. But it is different here, and the considerations of mootness and standing raised in **Hall** do not apply.

The fact that the **Hall** rationale does not apply to the case at bar is graphically demonstrated in a case decided the same day as **Hall v. Beals**. That is the case of **Brockington v. Rhodes**, 396 U.S. 41 (1969), in which the Supreme Court also dismissed an attack upon a state election law for mootness. There, as in **Hall**, the statute in question had been amended before final adjudication of the controversy, and the election had already been held. The Court noted, however, that the plaintiff in that case, unlike those in **Hall**, was still aggrieved by the statute as amended. Consistent with our discussion of the inapplicability of **Hall** to the case at bar, *supra*, the Supreme Court in **Brockington** refused to hold that that case was mooted merely because of the statutory amendment and subsequent election. Rather, it based its holding of mootness squarely on the ground that plaintiff had "... sought **only** a writ of mandamus to compel the appellees to place his name on the ballot as a candidate for a particular office in a particular election . . .," **Brockington**, *supra*, at 43 (emphasis added), and that such relief was obviously impossible **[53]** once the election had taken place. In fact, the Court indicated that relief might well have been forthcoming if plaintiff's prayers had been for broader measures: "He did not sue for himself and others similarly situated as independent **voters**, as he might have

. . ., [and] [h]e did not seek a declaratory judgment, although that avenue too was open to him."

Since plaintiff herein has, in fact, brought a class action seeking a declaratory judgment, it is clear that, unlike either **Hall** or **Brockington**, the relief he requests is still available. Thus neither of those cases constitute precedent which would warrant a refusal by this court to consider the three-month requirement whose constitutional validity this plaintiff has challenged. Indeed, **Brockington** can only be read as supporting the view that plaintiff's attack upon this requirement has not been rendered moot by the fact that the August 6, 1970, elections have already been held.

This court is thus of the opinion that plaintiff's case is not moot as to the three-month requirement. Further, plaintiff is still a member of the class aggrieved and will remain so until September 12, 1970.[1] It follows that this is **[54]** an appropriate case in which to consider the validity of the Tennessee three-month requirement, along with that State's one year requirement, and this court so holds.

Given, then, the fact that both the Tennessee one year and three-month requirements are properly before this court for consideration, it remains to determine the appropriate standard against which to test their constitutionality.

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[1] For this reason the court need not consider the question of whether plaintiff could still maintain suit to protect the rights of the class even if he were no longer a member of it. In this connection, **see generally** Griswold v. Connecticut, 381 U.S. 479 (1965); Flast v. Cohen, 392 U.S. 83 (1968); Sullivan v. Little Hunting Park, 396 U.S. 229 (1969); Walling v. Haile Gold Mines, 136 F.2d 102 (4th Cir. 1943); Buckner v. County School Board, 332 F.2d 452 (4th Cir. 1964); Cypress v. Newport News General and Nonsectarian Hospital Association, 375 F.2d 648 (4th Cir. 1967); Jenkins v. United Gas Corp., 400 F.2d 28 (5th Cir. 1968); Estaban v. Central Mo. State College, 415 F.2d 1077 (8th Cir. 1969).

"It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote . . ." **Reynolds v. Sims**, 377 U.S. 533, 554 (1964). It is, however, universally conceded that ". . . the States have the power to impose reasonable . . . requirements on the availability of the ballot," **Kramer v. Union Free School District**, 395 U.S. 621, 625 (1969), and for this reason "[t]he States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . ." **Lassiter v. Northampton County Board of Elections**, 360 U.S. 45, 50 (1959). Thus, as recently as 1964, a state's durational residency requirement, which was substantially identical to those of Tennessee, was upheld as constitutionally valid, **Drueding v. Devlin**, 234 F. Supp. 721 (D.C. Md. 1964), affirmed per curiam, 380 U.S. 125 (1965), on the ground that such requirements are permissible, unless they are ". . . so unreasonable that they amount to an irrational or unreasonable discrimination" among otherwise qualified voters. **Drueding**, *supra*, at 725.

Nevertheless, it has lately become apparent that the **Drueding** standard is no longer viable law. ". . . [H]istory has seen a continuing expansion of the scope of the right of suffrage in this country . . . [for the] right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike **[55]** at the heart of representative government." **Reynolds**, *supra*, at 555. For this reason, durational residency requirements are rapidly falling into greater and greater disfavor as an undue stricture on the "scope of the right of suffrage" of American citizens. Thus, while the legislative history of the Voting Rights Act Amendments of 1970 reveals that "[i]n the course of its deliberations the [House Judiciary] committee separately considered and rejected . . . an amendment establishing a uniform residency requirement for voting for

President and Vice President of the United States" (U. S. Code Congressional and Administrative News July 20, 1970, at 2155), state durational residency requirements on voting for those two offices were officially abolished in the final version of that Act.[2]

Certain of the language employed by Congress in the 1970 Amendments is applicable to the case at bar and is worth quoting in the present context:

> "Sec. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential [56] elections—
>
> (1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;
>
> (2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;
>
> (3) denies or abridges the privileges and immunities guaranteed to the citizens of each State

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[2] Part of the reason for the Committee's rejection of the proposal was that it anticipated a case then pending in the Supreme Court. That case, of course, was Hall v. Beals, *supra*, in which the Colorado durational residency requirement on voting in presidential elections was placed at issue. However, as mentioned at length above, by virtue of an amendment to the Colorado statutes, which shortened the period, the matter was held to have become moot as to the plaintiffs, and the case was dismissed for that reason. There is thus at present no definitive ruling by the Supreme Court on the validity of such requirements as those at issue in the case at bar. **But see** the dissenting opinions of Brennan, J., and Marshall, J., in Hall, *supra*, at 50 and 51, respectively, and Burg v. Canniffe, *infra*, in which a statutory three-judge court struck down a Massachusetts requirement.

under article IV, section 2, clause 1 of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they might vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of Presidential elections."

The court feels that these findings reflect the current trend of the law. Moreover, it is obvious that the "irrational or unreasonable" test for the constitutionality of voting rights statutes enunciated in **Drueding**, *supra*, has been superseded by the "compelling state interest" test mentioned by Congress in subsection (6) of the 1970 Amendments, *supra*.

The evolution of this latter test need not be herein elaborated, for it is clear that, as said by the three-judge court in **Burg v. Canniffe**, ... F. Supp. ... (D. Mass. July 8, 1970), "[a]ny lingering doubts that the compelling interest test must be used in determining the validity of state voting statutes . . . [were] permanently put to rest by two decisions of the Supreme Court handed down . . . on June 15, 1970, in **Evans v. Cornman**, . . . and on June 23, 1970, in **City of Phoenix v. Kolodziejski**, . . ."

In **Evans v. Cornman**, ... U.S. ..., 26 L.Ed.2d 370, the Court said:

"Moreover, the right to vote, as the citizen's link to his laws and government, is protective of all fundamental rights and privileges . . . [Citations omitted.]

> And before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny."

[57] It follows, then, that the validity of the Tennessee provisions herein in question must be judged according to the "compelling state interest" standard. It remains to examine this standard in more detail and then to apply it to the Tennessee durational residency requirements.

"The 'compelling interest' doctrine has two branches. . . . [One] branch . . . requires that classifications [among citizens] based upon 'suspect' criteria be supported by a compelling [state] interest. . . ." **Shapiro v. Thompson**, 394 U.S. 618, 658 (1969) (Harlan, J., dissenting). Certain of the classifications which have in the past been held to be "suspect" include those based upon race, **Korematsu v. United States**, 323 U.S. 214 (1944), upon wealth, **Harper v. Virginia Board of Elections**, 383 U.S. 663 (1966), upon political allegiance, **Williams v. Rhodes**, 393 U.S. 23 (1968), and, since the holding in **Shapiro**, *supra*, those based upon interstate movement.

"The second branch of the 'compelling interest' principle is . . . that a statutory classification is subject to the 'compelling interest' test if the result of the classification may be to affect a 'fundamental right,' regardless of the basis of the classification." **Shapiro**, *supra*, at 660 (Harlan, J., dissenting). And it is now settled beyond doubt that the right to vote is just such a "fundamental right"—indeed, the most fundamental right of all:

> " 'Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.' [Citation omitted.] This careful examination is necessary because statutes dis-

tributing the franchise constitute the foundation of our representative society. . . . Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and [58] citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. . . ." Kramer, *supra*, 395 U.S. at 626, 627 (emphasis added).

In short, since there is no question (1) that the classification of *bona fide* residents on the basis of recent arrival in Tennessee, as made by the Tennessee durational residency requirements, is "suspect," and (2) that those requirements otherwise infringe upon one of the fundamental civil and political rights of the citizens of Tennessee—the right to vote—the Tennessee durational residency requirements must be held to be constitutionally invalid, unless they are shown to be necessary to promote a compelling state interest.[3]

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[3] The three-month requirement affects not only recent arrivals from out of state, but also those who have recently changed their county of residence within Tennessee. Individuals in this latter category, however, are permitted to vote in their former counties of residence for ninety days after they have removed therefrom—provided they were properly registered to vote in such county—by virtue of T.C.A. § 2-304. This court need not consider, however, whether this classification, which forces certain Tennesseans to return to their former counties to vote, is one based upon "suspect" criteria, for it is clearly one affecting a "fundamental right" and, as such, comes within the "second branch" of the compelling interest test. Moreover, the three-month requirement raises the equal protection issue, over and above the "suspect" criteria and "fundamental right" rationales, when one compares its effect upon recent intrastate movers with its effect upon recent arrivals from out of state. Persons in the latter category are given no opportunity at all to vote in Tennessee, while those in the former may vote for ninety days in their former counties of residence. Thus, insofar as the right to vote in Tennessee is concerned, the State's three-month durational residency requirement is not applied equally to all persons who have moved into a given county within the three-month period next preceding an election.

Given, then, the test to be applied, it is our opinion that the Tennessee durational residency requirements fall short of meeting it. The only constitutionally permissible purpose of such requirements is ". . . to secure the freedom and purity of the ballot box in the various counties of the state [59] by preventing plural voting and by requiring voters to vote in the election precincts in which they reside. . . ." T.C.A., § 2-301. The question of whether such a purpose constitutes a "compelling state interest" need not be pursued in the present context, for, assuming that Tennessee's interest in promoting freedom and purity of the ballot box and preventing plural voting is a compelling one, it is clear that that State's durational residency requirements are in no wise "necessary" to promote such an interest. That such purposes are better served by the application of a system of voter registration than by durational residency requirements is amply demonstrated by the fact that the section of the Tennessee Code Annotated in which the foregoing quotation appears is entitled "Purpose of **voter registration system**" (emphasis added) and by the fact that this section is the only one in the Tennessee Code Annotated dealing specifically with protection of the "compelling state interest" which defendants assert is instead protected by the Tennessee durational residency requirements.

As is provided in the case of presidential elections by the Voting Rights Act Amendments of 1970, *supra*, T.C.A., § 2-304 provides that ". . . registration or reregistration shall not be permitted within thirty (30) days of any primary or general election provided for by statute." This reflects the judgment of the Tennessee Legislature that thirty days is an adequate period in which Tennessee's election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting. It is clear that, in actuality, Tennessee's

interest in these matters is protected by the thirty-day period, and not by that State's durational residency requirements. Neither the purpose of, nor the justification for, these latter requirements can be [60] found in either the Tennessee Constitution or the Tennessee Code Annotated, and this court is of the opinion that they are not "necessary" to promote any "compelling state interest" and, indeed, serve no valid purpose.

Unquestionably, Tennessee may constitutionally require individuals to be *bona fide* residents before allowing them to vote in the State. Nevertheless, it is equally beyond question that if such persons ". . . are in fact residents, with the intention of making . . . [Tennessee] their home indefinitely, they, as all other qualified residents, have a right to an equal opportunity for political representation," **Carrington v. Rash**, 380 U.S. 89, 94 (1965), and the fact that they may be recent arrivals from out of state confers no right upon that state arbitrarily to deny them the franchise.

Accordingly, it is the judgment of this court that the one year and three-month durational residency requirements contained in Article IV, Section 1 of the Tennessee Constitution, in T.C.A., § 2-201, and in T.C.A., § 2-304 are repugnant to the Constitution of the United States of America, and are therefore null, void, and of no effect.

An order to implement this decision and providing for appropriate injunctive relief will be submitted by counsel within ten (10) days.

(Jurat Omitted)

[61] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

James F. Blumstein,
Plaintiff,
v.
Buford Ellington, et al.,
Defendants.
} Civil Action No. 5815.

ORDER

(Filed September 9, 1970)

In accordance with the Opinion filed in this cause on August 31, 1970, it is Ordered:

1. That the one-year and three-month durational residency requirements contained in Article IV, Section 1 of the Tennessee Constitution, in T.C.A. § 2-201, and in T.C.A. § 2-304 are repugnant to the Constitution of the United States of America, and are therefore null, void, and of no effect.

2. That defendants cause the registrars in all counties of Tennessee to fully and completely register and give registration cards to all *bona fide* residents of the State of Tennessee, regardless of the length of their prior period of residence either in the State of Tennessee or in the county in which they seek to register; and that no inquiry be made concerning duration of prior residence so as to prejudice those seeking to register under this Order.

3. That defendants cause to be published daily through October 3, 1970, in both the morning and afternoon news-

papers of Memphis, Nashville, Knoxville and Chattanooga, notice of this Order, informing the members of the aggrieved class of their right to register and of the willingness of the registrars to so register them; and take other reasonable measures to assure that members of the aggrieved class are aware of their rights under this Order. [62] 4. That defendants cause the registrars of all counties of Tennessee to remain open from one day after the effective date of this Order through October 3, 1970 (30 days prior to the November 3, 1970, general election, as provided in T.C.A. § 2-304), Monday through Friday from 9:00 A.M. to 4:00 P.M., and Saturdays from 9:00 A.M. to 2:00 P.M., so that the registrars of all counties remain open on all Saturdays, commencing on September 12, 1970, and ending on and including October 3, 1970, as permitted by T.C.A. § 2-306, in order to provide a greater opportunity for members of the class to take advantage of this Order and to facilitate the handling of the increased number of new registrants, except that the registrars in counties whose population according to the 1960 census is less than 28,000 need only remain open two days a week, one of which must be Saturday, during the weeks September 13, 1970 through September 19, 1970, and September 20, 1970, through September 26, 1970, and in addition remain open every day, Monday through Saturday, during the week September 27, 1970, through October 3, 1970, the same as the more populous counties.

5. That defendants Jarrell, Dale, Henderson, Muse, and Thomas, members of the Davidson County Election Commission, and defendant Ferrell, registrar-at-large of Davidson County, fully and completely register plaintiff as of July 1, 1970, and issue to him a registration card forthwith, without further application on his part.

6. That defendants reimburse plaintiff for all fees and costs incurred in the course of this litigation.

NCR

CARD 2

Dated: September 9, 1970.

/s/ Frank Gray, Jr.
For the Court

[63] Approved for Entry:

/s/ James F. Blumstein
Counsel for Plaintiff

/s/ Robert H. Roberts

/s/ Thomas E. Fox
Counsel for Defendants

Dated: September 9, 1970.

(Jurat Omitted)

[64] IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MOTION TO STAY ORDER PENDING APPEAL TO THE UNITED STATES SUPREME COURT

(Title Omitted—Filed September 11, 1970)

Come the defendants in the above cause and pray that this Court stay the order entered by it on September 9, 1970, pursuant to the opinion filed in the cause on August 31, 1970, and for cause, says:

(1) Unless such order is stayed, pending the appeal in this cause, great confusion can result and cast a cloud upon the upcoming general election of November [65] 3rd, 1970, in which major offices in this state, and in the United States Congress, are to be filled.

(2) The order goes farther than any decision of the Federal Courts entered heretofore, in that it strikes down both the one year in-state residency requirement for voting, and the three months in-county residency require-

ment for voting. This leaves no period of time for the local election officials to ascertain whether or not an applicant to register to vote is a bona fide resident of the state, since registration may take place in this state up until thirty days prior to the election, and at such time registration books are closed and registration, therefore, final.

(3) If the voters held to be entitled to vote, under the order as entered, is denied such for the November election, it will create a situation no different from that which has existed for one hundred years, except for the 1953 constitutional change from six months in-county to three months in-county residency requirement. On the other hand, if these voters authorized to vote pursuant to the order of this Court, are permitted to register prior to and vote at the November election, and the United States Supreme Court subsequently finds that this Court's order, in striking down all residency requirement is erroneous, the entire [66] election could be placed in extreme jeopardy, if not invalidated, as a result of such unwarranted votes.

In the alternative, defendants pray that this Court will stay so much of this order as pertain to the three months residency requirement in the county as a prerequisite for voting.

Respectfully submitted

Thomas E. Fox
Robert H. Roberts
Attorneys for Defendants
By Robert H. Roberts
Assistant Attorney General

David M. Pack
Attorney General and Reporter
Of Counsel

[67] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

James F. Blumstein
vs.
Buford Ellington, et al. } Civil No. 5815

ORDER

(Filed September 11, 1970)

Defendants have filed a motion to stay the order entered herein September 9, 1970, pending an appeal thereof to the Supreme Court of the United States.

Upon consideration, by all members of the court, the court is of the opinion that the motion is not well taken, and, accordingly, it is Denied.

For the Court

/s/ Frank Gray, Jr.
United States District Judge

(Jurat Omitted)

[68] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

James F. Blumstein,
Plaintiff,
v.
Buford Ellington, et al.,
Defendants.
Civil Action No. 5815.

MODIFICATION OF ORDER

(Filed September 22, 1970)

By agreement of the parties, the Order of the Court in the above-styled action entered September 9, 1970, is modified as follows:

Modifying the first line of paragraph 3 to read as follows:

3. That defendants cause to be published daily from and including Sunday, September 27, 1970 through

It is understood that the reason that Plaintiff has agreed to this modification is that the Defendants herein have agreed to replace the advertisement which has been running by one that has been mutually agreed upon among Defendants Pack and Hassler and Plaintiff.

/s/ James F. Blumstein
Plaintiff, Pro Se

/s/ Robert H. Roberts
Attorney for Defendants

Dated: September 22, 1970

/s/ Frank Bray, Jr.
For the Court

(Jurat Omitted)